

LIBRARY  
SUPREME COURT, U.S.



No. 330

---

*In the Supreme Court of the United States*

OCTOBER TERM, 1948

THE UNITED STATES OF AMERICA, APPELLANT

vs.

THE INTERSTATE COMMERCE COMMISSION, THE  
UNITED STATES OF AMERICA, THE PENNSYLVANIA  
RAILROAD COMPANY, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT OF  
THE DISTRICT OF COLUMBIA

STATEMENT OF THE INTERSTATE COMMERCE  
COMMISSION AS TO JURISDICTION

---

**In the District Court of the United States  
for the District of Columbia**

CIVIL ACTION No. 4729-47

UNITED STATES OF AMERICA, PETITIONER

v.

INTERSTATE COMMERCE COMMISSION AND UNITED  
STATES OF AMERICA, DEFENDANTS

THE PENNSYLVANIA RAILROAD COMPANY, THE  
VIRGINIAN RAILWAY COMPANY, SOUTHERN RAIL-  
WAY COMPANY, ATLANTIC COAST LINE RAILROAD  
COMPANY, SEABOARD AIR LINE RAILROAD COM-  
PANY, AND NORFOLK SOUTHERN RAILWAY COM-  
PANY, INTERVENERS

**STATEMENT OF THE INTERSTATE COMMERCE  
COMMISSION AS TO JURISDICTION**

The Interstate Commerce Commission does not contest the jurisdiction of the Supreme Court to review the judgment of the court below. Compare *United States v. Corrick*, 298 U. S. 435, 440.

The Commission contends, however, that the District Court correctly decided that it did not have jurisdiction because the Urgent Deficiencies Act does not authorize the United States to maintain this action. The Commission also contends that the District Court was without jurisdiction

For the additional reason that the Urgent Deficiencies Act does not authorize judicial review of an order of the Interstate Commerce Commission denying reparation for alleged past violations of the Interstate Commerce Act. *Standard Oil Co. v. United States*, 283 U. S. 235; *Ashland Coal & Ice Co. v. United States*, 325 U. S. 840.

In the Supreme Court the Commission will urge, as it did in the District Court, that its order is lawful on its merits and should not be set aside. In making this contention the Commission will rely upon the principle that an appellee may defend the decree on any ground that appears in the record, even though the ground was not adopted by the court below. See *United States v. American Ry. Exp. Co.*, 265 U. S. 425, 435-436. In the District Court the United States as petitioner asked to have the order of the Interstate Commerce Commission set aside on the ground that the findings of the Commission were not supported by substantial evidence and that the order was arbitrary and contrary to law. The United States introduced in evidence before the District Court a certified copy of the record before the Interstate Commerce Commission. The United States as petitioner, the Interstate Commerce Commission, and the interveners briefed and argued the merits of the Commission's order before the District Court.

The praecipe filed by the United States, as appellant, did not designate the record before the Interstate Commerce Commission as a part of the record to be incorporated in the transcript of the record on appeal. It appears that the United States as appellant does not intend to ask the Supreme Court to pass upon the merits of the Commission's order in the event that the Supreme Court holds that the District Court had jurisdiction of the action. Presumably the United States, as appellant, believes that if the Supreme Court decides that the District Court had jurisdiction of this action the judgment of the District Court should be reversed, the case remanded to the District Court for a consideration of the question of the validity of the Commission's order and the lower court's determination of that question, reviewed by the Supreme Court on a subsequent appeal.

The Commission suggests that the appellate jurisdiction of the Supreme Court should not be exercised in this piecemeal manner. The provisions of the Urgent Deficiencies Act show that it was the intention of Congress that suits to annul, suspend, or set aside orders of the Interstate Commerce Commission should be expedited both in the District Court and in the Supreme Court. See 28 U. S. C. 47 and 47a. Cf. *Capital Transit Co. v. United States*, 325 U. S. 357; *United States v. N. Y. Cent. R. Co.*, 272 U. S. 457. The Commission submits that the District Court



correctly concluded that it did not have jurisdiction of this action and that this appeal should be disposed of on that ground without reference to the merits of the Commission's order. But if on this appeal the Supreme Court should decide that the lower court had jurisdiction, we believe that the Supreme Court should then pass on the validity of the Commission's order. Accordingly, the Commission, acting under the provisions of Paragraph 2, Rule 10 of the Rules of the Supreme Court, has filed a counter-praecipe designating the record before the Interstate Commerce Commission as an additional portion of the record in the District Court that should be included in the record on appeal.

Respectfully submitted.

Daniel W. Knowlton

DANIEL W. KNOWLTON,

*Chief Counsel,*

*Interstate Commerce Commission.*

SEPTEMBER 9, 1948.